

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Determine
Whether Baseline Allowances for Residential
Usage of Gas and Electricity Should Be Revised.

Rulemaking 01-05-047
(Filed May 24, 2001)

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK FOR SUBSTANTIAL CONTRIBUTIONS
TO DECISION (D.) 02-04-026, D.04-02-057, AND D.04-04-020**

This decision awards The Utility Reform Network (TURN) \$147,217.03 in compensation for its contribution to Decision (D.) 02-04-026, D.04-02-057, and D.04-04-020.

1. Background

The Commission opened Rulemaking (R.) 01-05-047 to consider steps to help residential customers to afford their basic energy needs in light of the substantial rate increases and the multi-tiered rate structure adopted as a result of the energy crisis in D.01-05-064. Phase 1 of the rulemaking addressed the following issues: (1) the updating of the energy usage data employed by the Commission in calculating baseline quantities, (2) the appropriate percentage of energy usage to employ in calculating baseline quantities (within the range specified by Pub. Util. Code § 739(d)(1)), and (3) possible changes to the medical baseline allowance. Suggestions for legislative changes were originally raised in

a ruling issued on June 11, 2001,¹ but were subsequently deferred to Phase 2 of the proceeding pursuant to the scoping memo issued on July 6, 2001.²

In the decision concluding Phase 1 of the proceeding, D.02-04-026, the Commission increased the natural gas and electric baseline allowances for many residential customers and began the process of improving the medical baseline program. We also noted that several parties had raised issues in their testimony falling outside the scope of Phase 1, including the consideration of factors such as family size in calculating baseline allowances. We deferred these issues to Phase 2.

In Phase 2, which culminated in D.04-02-057, we evaluated the affordability of basic energy needs for customers who might suffer significant hardship for reasons other than having a low income. Specifically, Phase 2 considered household characteristics (including household size and demographics), climate zones and the geographic boundaries of utility baseline zones, well-water pumping for household use, common areas for condominiums and multiple dwelling units, seasonal residence effects on average use calculations (including the application of baseline to vacation homes), the definition of seasons, the rate impacts of changes to the baseline program, and proposed legislative changes for many of these issues.³

¹ Ruling of Assigned Commissioner and Administrative Law Judge Setting Prehearing Conference, issued June 11, 2001.

² Assigned Commissioner's Ruling and Scoping Memo, issued July 6, 2001.

³ In D.03-01-037, an interim decision in Phase 2, the Commission also approved a modified settlement giving the residential common area electric accounts served by Pacific Gas and Electric Company (PG&E) the option of being served on commercial rate schedules.

Significantly for purposes of the request here, D.04-02-057 also adopted a program proposed by TURN for residential customers of the three major electric utilities in California. Under this program, lower-middle income large household participants are charged lower Tier 2 electricity rates for their Tier 3 usage.⁴ We did not extend this program to electric customers of the smaller California utilities, however, since their upper-tier rates were not as high as those of the three large electric utilities, and these customers did not appear to have a comparable need for rate relief. D.04-02-057 also adopted a policy to exclude certain seasonal usage from baseline calculations.

R.01-05-047 is now closed except for resolution of the requests for intervenor compensation.

2. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

⁴ Lower-middle income households are defined as those with income levels between 175% and 250% of the federal poverty threshold, e.g., \$32,500 to \$46,500 for a household of four. The 175% criterion is just above the eligibility limit for the California Alternative Rates for Energy (CARE) program.

1. The intervenor must satisfy certain procedural requirements, including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)
2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of the final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations in a Commission order or decision. (§§ 1802(i), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For purposes of the discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions of Items 5 and 6.

3. Procedural Issues

The first prehearing conference in this proceeding was held on June 21, 2001. TURN filed an NOI on July 20, 2001, within the applicable 30-day period. On March 7, 2002, Administrative Law Judge (ALJ) Sarah Thomas issued a ruling finding TURN eligible to seek compensation, inasmuch as (1) the NOI was timely filed, (2) TURN is authorized by its articles of incorporation to represent the interests of residential customers, and (3) owing to a ruling issued in Application (A.) 99-10-023 on December 29, 2000, there was a rebuttable presumption that

TURN's participation in this proceeding would represent a financial hardship for it.⁵ ALJ Thomas's ruling also noted that TURN had furnished an itemized estimate of the compensation it expected to seek, but cautioned that like any intervenor, TURN would be expected to "fully support its request for compensation." (*Id.* at 11.)

TURN filed the instant request for an award of compensation on June 4, 2004, well within the required 60-day period after issuance of D.04-04-020. No party opposes TURN's request, although Mountain Utilities—which is not connected to the California transmission grid and serves all of its customers with power generated from diesel generators—argues that its *pro rata* share of the amount TURN is seeking is so small that it should be exempted from having to pay any part of the award.

Based upon the above-noted facts, it is clear that TURN has satisfied all four of the procedural requirements necessary to submit its request for compensation.

4. Substantial Contribution

In evaluating whether a customer has made a substantial contribution to a proceeding, we look at several things. First, did the ALJ or the Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations, put forward by the customer? (See § 1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement,

⁵ Ruling Regarding Notices of Intent to Claim Compensation, issued March 7, 2002, *mimeo.* at pp. 4, 6-7, 10-11.

complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (See §§ 1802(i) and 1802.5.) As described in § 1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment:

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁶

With this guidance in mind, we turn to the contributions that TURN claims it made to this proceeding.

A. TURN's Substantial Contribution to D.02-04-026

It is clear that TURN's work made a substantial contribution to D.02-04-026, the Phase 1 decision in this proceeding. As noted above, Phase 1 considered threshold issues such as whether the Commission has authority under § 739 to adjust baseline quantities, what set of consumption data should be used, and which percentage of energy usage should be selected for establishing baseline allowances. TURN asserts (at page 4 of its request) that in Phase 1, "the Commission adopted the bulk of TURN's position on all major contested issues," even though most of its recommendations were opposed by one or more of the state's major utilities, PG&E, Southern California Edison Company (Edison), and San Diego Gas & Electric Company (SDG&E).

⁶ D.98-04-059, 79 CPUC 2d 628, 653.

We have reviewed TURN's pleadings and the discussion in D.02-04-026, and we agree that the Commission adopted TURN's position on six of the seven principal issues on which TURN took a position. In D.02-04-026, we agreed with TURN that (1) the Assembly Bill (AB) 1890 rate freeze did not preclude the Commission from adjusting baselines in this proceeding (*mimeo.*, pp. 11-12); (2) Water Code § 80110 sets a minimum level of rate protection for residential customers that can be expanded but not reduced based on § 739 (*id.* at 12-18); (3) the Commission may change baseline allowances in proceedings other than General Rate Cases (GRCs) (*id.* at 19-20); (4) the rate impacts of baseline changes should be examined in a later phase of this proceeding (*id.* at 20); (5) setting baseline quantities at the top of the statutorily permitted range does not result in quantities that violate § 739 (*id.* at 30-31); and (6) baselines should be updated with recent consumption data using the bill frequency methodology, either weather-normalized or averaged over multiple years (*id.* at 7-9).

As TURN points out, the only one of its major positions that was not adopted in D.02-04-026 was the contention that in updating the three utilities' baseline allowances, the Commission should ignore consumption data after August 2000 for SDG&E, and data after December 2000 for PG&E and Edison. TURN argued that the data after these dates reflected extraordinary conservation efforts by ratepayers, and as such were one-time phenomena unlikely to recur. The Commission rejected this argument, however, concluding that it was less confident than TURN that the consumption changes were short-term and non-recurring, and noting that averaging consumption data over a period of years, as well as weather-normalizing it, "should serve to cushion any related [rate] impacts." (*Id.* at 8.)

The Commission has awarded full compensation where an intervenor's positions were not adopted in full, especially where the proceeding has a broad scope. (*See* D.98-04-028, 79 CPUC 2d 570, 573-574.) By prevailing on six of seven major issues it addressed, TURN obviously achieved a high level of success in Phase 1 of this proceeding. Moreover, on the one issue where we did not adopt TURN's position, we benefited from TURN's analysis and discussion of the consumption data covering the period after eruption of the energy crisis.

B. TURN's Substantial Contribution to D.04-02-057

TURN also seeks intervenor compensation for its work in Phase 2 of this proceeding, which resulted in D.04-02-057. TURN summarizes its work in and its contributions to Phase 2 as follows:

“[D.04-02-057] covers all issues raised in phase two including a variety of proposals for augmenting the baseline program to accommodate larger households, senior citizens, and water well pumping. It also addressed the treatment of seasonal resident usage in calculating baselines, common area accounts, and the treatment of revenue ‘shortfalls’ associated with updated baselines. TURN's participation in this phase was extensive and involved the preparation of two sets of opening and reply briefs, substantial quantities of prepared testimony, and ongoing collaboration with [the Latino Issues Forum, or LIF] to present a coordinated case for a surcharge waiver targeted at low-income, large-family households.

“TURN also provided the Commission with groundbreaking analysis performed by Bill Marcus, based on data collected by all three utilities, that demonstrated significant correlations between income, household occupancy, square footage and energy usage . . . This analysis proved critical in convincing the Commission to adopt TURN's proposed tier 3 surcharge waiver for households containing three or more occupants with total income between 175% and 250% of the federal poverty level.” (TURN Request, pp. 6-7; footnotes omitted.)

Once again, after comparing D.04-02-057 with TURN's testimony and pleadings, we agree that TURN has fairly characterized its contributions to Phase 2. The most important of these contributions, as the quote above suggests, was to provide analysis and empirical support for the idea that lower-middle income households with three or more persons should be exempt from Tier 3 electricity surcharges. D.04-02-057 summarized TURN's proposal as follows:

"TURN finds electric rate relief based on household size to [be] warranted. Focusing on large households that may be least able to pay for their higher energy needs, TURN reports that households of three or more persons with lower-middle incomes in moderate-sized dwellings typically use more than 130% of baseline quantities year-round, with even higher use in peak summer months. Based on this finding, TURN recommends that households of three or more with income between 175% (the current upper limit for CARE) and 250% of the federal poverty limits be exempt from Tier 3 electricity surcharges (or, more generally, charges for Tier 3 usage in excess of Tier 2 charges) of PG&E, SCE, and SDG&E." (*Mimeo.* at 37; footnotes omitted.)

After an extensive discussion of this proposal and the other parties' critiques of it (*id.* at 36-49), we adopted TURN's Tier 3 exemption proposal. (*Id.* at 49-55.) After noting that TURN and LIF had convincingly demonstrated that many lower-middle income households with three or more persons had difficulty paying their electricity bills, we concluded that TURN's proposal was an effective means of addressing the problem:

"TURN has established that the electricity usage of lower-middle income large household customers tends to extend into Tier 3, which encompasses usage near and somewhat above average consumption. TURN's Tier 3 proposal would provide bill savings to those customers, and the potential savings as indicated above are substantial enough to help ensure the affordability of these customers' reasonable energy needs." (*Id.* at 53.)

We also agreed with TURN on two points relating to the implementation of its Tier 3 exemption proposal. First, we concurred that the proposal was within the scope of the baseline program and could be considered in this proceeding as a means of balancing the goals of conservation and affordability. (*Id.* at 29-31.) Second, we agreed that the proposal could be implemented without creating unreasonable revenue losses or excessive administrative costs. (*Id.* at 54-59.)⁷

Regarding other issues TURN raised in Phase 2, D.04-02-057 accepted TURN's arguments that (1) the Commission has authority under § 739 to take into account factors other than end-uses in setting baseline quantities, including household size, family income, and whether a residence is primary or seasonal (*id.* at 25-29); (2) seasonal residences should be excluded from baseline calculations in climate zones where their inclusion would cause a material reduction (*i.e.*, at least 3%) in baseline quantities (*id.* at 73-77); (3) the allocation and collection of "undercollections" associated with baseline changes should be deferred to the next GRC (or other appropriate proceeding) for PG&E, Edison, and SDG&E (*id.* at 96-100); and (4) under Water Code § 80110, total bundled retail electricity charges for the first 130% of baseline consumption cannot be increased until the California Department of Water Resources (DWR) has

⁷ TURN did not enjoy a complete victory on its exemption proposals, however. We concluded that because the record did not contain enough evidence regarding Tier 4 usage by large households, TURN's proposal that a Tier 4 exemption be provided for customers of SDG&E should be rejected. (*Id.* at 53.) We also rejected TURN's suggestions that (1) all-electric, lower-middle income senior citizen households in the Central Valley and mountain climate zones should be exempt from Tier 3 surcharges, and (2) that a gas baseline increase of 14-22 therms during peak winter months should be made for senior citizen households. (*Id.* at 61-64.)

finished recovering the costs of power procured on behalf of utility customers (in other words, the 130% limitation in § 80110 does not apply merely to commodity charges) (*id.* at 92-96).

As noted above, in proceedings with a broad scope, the Commission has awarded full compensation even where an intervenor's positions were not adopted in full. (*See*, D.98-04-028.) In view of TURN's success in having its proposals adopted in D.04-02-057, no reduction in compensation is appropriate for TURN's work in Phase 2.

C. TURN's Substantial Contribution to D.04-04-020

In addition to seeking compensation for its work in Phases 1 and 2, TURN requests compensation for the work it did in opposing SDG&E's application for rehearing of D.04-02-057. The Commission disposed of this rehearing application in D.04-04-020.

The sole issue raised by SDG&E's rehearing application was the rejection in D.04-02-057 of the utility's interpretation of Water Code § 80110; *i.e.*, that the rate protection in AB 1X for usage of up to 130% of baseline applies only to the *commodity component* of residential rates, and not to the *total*, bundled rate. TURN points out that the Joint Response it filed along with the Office of Ratepayer Advocates (ORA) was the only response to SDG&E's application for rehearing.

TURN argues that it should be compensated for this work because D.04-04-020 "relies upon many of the points raised in the TURN-ORA filing," including the following:

"- SDG&E's application represents an impermissible collateral attack on numerous previous Commission decisions which unequivocally concluded that, under § 80110 of the Water Code, the Commission

may not increase the total rates charged for usage up to 130[%] of baseline until [DWR] has recovered all of its costs.

- Based on a review of the language of Water Code § 80110, the legislative history of ABx1, and a review of other statutory provisions (including § 392(a) and § 399(e)(6) of the Public Utilities Code) the phrase ‘electricity charges’ cannot be construed to unambiguously apply only to the commodity portion of retail rates.

- Energy Division approvals of uncontested SDG&E advice letter tariff filings do not provide any legal basis for concluding that the Commission had reversed previously adopted formal decisions in favor of SDG&E’s preferred interpretation of Water Code § 80110.

- SDG&E’s projected consequences of adherence to the baseline protections in § 80110 are unfounded, overly pessimistic, rely on unrealistic assumptions and should be rejected as irrelevant.” (TURN Request, p. 9; footnotes omitted.)

After reviewing both the TURN-ORA Joint Response and the discussion in D.04-04-020, we think TURN has fairly characterized its contributions to this decision. Accordingly, it is appropriate to compensate TURN for the work it did in connection with SDG&E’s application for rehearing of D.04-02-057.

In view of our determination that TURN has made a substantial contribution to the specified Commission decisions, we now analyze whether the amount of compensation sought is reasonable.

5. Reasonableness of Requested Compensation

TURN requests a total of \$147,217.03 for its participation in this proceeding. Somewhat more than half of that amount is accounted for by the following claims for attorneys fees:

Attorney	Year	Rate	Hours	Total
Matthew Freedman	2001	\$190.00	76.75	\$14,582.50
	2002	\$200.00	207.0	\$41,400.00
	2003-04	\$250.00	42.0	\$10,500.00
	2004	\$125.00 ⁸	10.5	\$ 1,312.50
Michel Peter Florio	2001	\$350.00	1.5	\$ 525.00
	2002	\$385.00	13.25	\$ 5,101.25
	2003	\$435.00	0.5	\$ 217.50
Robert Finkelstein	2001	\$310.00	3.75	\$ 1,162.50
	2002	\$340.00	6.25	\$ 2,125.00
	2003	\$365.00	0.5	\$ 182.50
	2004	\$182.50 ⁹	4.0	\$ 730.00
Marcel Hawiger	2001	\$190.00	7.25	\$ 1,377.50
SUBTOTAL				\$79,216.25

The following portion of TURN's request is accounted for by expert witness fees, all for witnesses associated with JBS Energy, Inc. (JBS):

⁸ Work on TURN's fee request, billed at half of Freeman's usual rate in accordance with D.98-04-059 (79 CPUC 2d 628, 658).

⁹ Work on TURN's fee request, billed at half of Finkelstein's usual rate in accordance with D.98-04-059.

Expert Witness	Year	Rate	Hours	Total
William Marcus	2001-02	\$175.00	97.32	\$17,031.00
	2003	\$185.00	0.5	\$ 92.50
Jeff Nahigian	2001-02	\$115.00	223.75	\$25,731.25
	2003	\$125.00	1.0	\$ 125.00
Greg Ruszovan	2002	\$115.00	185	\$21,275.00
Gayatri Schilberg	2002	\$130.00	0.34 ¹⁰	\$ 44.20
JBS Travel Expenses				\$ 363.90
SUBTOTAL				\$64,662.85

In addition to these attorney and expert witness fees, TURN seeks compensation for the following costs:

Cost	Amount
Photocopying Expense	\$2,936.14
Postage costs	\$ 301.80
Facsimile/Phone	\$ 33.99
Federal Express	\$ 66.00
SUBTOTAL	\$3,337.93

¹⁰ In a September 14, 2004 letter to the Assigned ALJ, Robert Finkelstein, TURN's Executive Director, notes that TURN has discovered that 21.47 of the 21.81 hours of Schilberg's time for which TURN originally sought compensation here were actually incurred in connection with work done in an Edison GRC, A.02-05-004. Finkelstein states that it has included the 21.47 hours in its request for compensation in A.02-05-004, and would like its request here to be reduced by the same amount. Accordingly, we are awarding TURN compensation for 0.34 hours of work by Schilberg.

The components of a customer's compensation request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are considered reasonable and eligible for compensation.

To assist the Commission in determining the reasonableness of requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning, where possible, a reasonable dollar value to the ratepayer benefits of the customer's participation. (79 CPUC 2d 628, 650.) The costs of the customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists the Commission in determining the overall reasonableness of the request.

TURN argues that in this proceeding, the benefits of its participation to ratepayers greatly exceeded the amount of compensation it is seeking. The increased baseline allowances that resulted from D.02-04-026 for residential customers of the three major utilities "reduced annual residential class costs by approximately \$225 million," according to TURN. (TURN Request, p. 12.) Moreover, if 100% of the eligible customers participated in the Tier 3 surcharge waiver that resulted from D.04-02-057, the net reduction in costs for participating ratepayers should reach a theoretical maximum of \$46 million. (*Id.*)¹¹ These

¹¹ In making these estimates, TURN notes that the benefits of its participation "can be quantified for certain ratepayers but are impossible to determine for the entire residential class since the allocation of baseline-related 'shortfalls' will be decided in other ongoing proceedings." (*Id.* at 12.)

amounts (which are consistent with the estimates in TURN's testimony) greatly exceed the amount of the compensation requested here, and so TURN's participation should be deemed productive within the meaning of § 1801.3(f).

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys and expert witnesses, accompanied by a brief description of each activity. This hourly breakdown, which is attached to TURN's request as Appendix A, reasonably supports the claim for total hours. Because we have found that TURN's efforts made a substantial contribution to the principal decisions in this proceeding (D.02-04-026, D.04-02-057, and D.04-04-020), we do not need to exclude compensation for any particular issue from the award we are making. We note, however, that TURN has broken down its efforts by issue, and that if we had needed to eliminate certain issues from the award, this breakdown would have facilitated the process.

The final factor we consider in determining compensation is the market rates for similar services from comparably qualified persons. In this case, this factor is a straight-forward exercise, because the rates that TURN seeks for its attorneys and expert witnesses have all been approved in previous Commission decisions.

As the table on page 13 indicates, most of the attorney hours for which TURN is seeking compensation represent work by Freedman. TURN states that Freedman served as its principal attorney in both Phases 1 and 2, with "supporting roles" played by Florio, Finkelstein, and Hawiger. (TURN Request, p. 14.) TURN seeks hourly compensation of \$190.00 for Freedman's work in 2001, \$200.00 in 2002, and \$250.00 in 2003 and 2004.

Since we have previously approved the requested rates for Freedman's work in 2001 and 2002,¹² the amounts sought for those years are reasonable, and we will approve them. The rate requested for Freedman's work in 2003 requires some discussion, however. TURN argues that since almost all of the time Freedman spent on this proceeding in 2003 took place during October and November of that year, compensation at the \$250 rate approved for Freedman's late 2003 and 2004 work in D.04-05-050 is appropriate, rather than at the \$225 rate approved for his early 2003 work in D.04-02-017. (TURN Request, p. 19, n. 26.)¹³ Since the time entries in TURN's request show that 21.0 of the 23.25 hours Freedman spent on this case in 2003 took place in October and November, we agree that this is a reasonable request, and we will grant it.

No such complications attend TURN's requested hourly rates for Florio's work (\$350 in 2001, \$385 in 2002, and \$435 for 2003). Since we have previously approved these rates for Florio,¹⁴ the amounts sought are reasonable and we will grant them. The same is true for the amounts sought for Finkelstein's work in this proceeding (\$310 for 2001, \$340 for 2002, and \$365 for 2004),¹⁵ and for the work of Hawiger.¹⁶

¹² See, D.02-10-056, *mimeo.* at 10 (2001 rate); D.03-04-011, *mimeo.* at 17 (2002 rate).

¹³ See, D.04-02-017, *mimeo.* at 16 (early 2003 rate); D.04-05-050, *mimeo.* at 11 (late 2003 and early 2004 rate).

¹⁴ See, D.02-06-070, *mimeo.* at 21-22 (2001 rate); D.02-09-040, *mimeo.* at 8 (2002 rate); D.04-02-017, *mimeo.* at 15 (2003 rate).

¹⁵ See, D.02-06-070, *mimeo.* at 21 (2001 rate); D.03-01-074, *mimeo.* at 7 (2002 rate); D.03-08-041, *mimeo.* at 7 (2003 rate). TURN states that since most of Finkelstein's work on this case in 2004 was devoted to the compensation request, it is seeking

Footnote continued on next page

We also find reasonable the hourly rates that TURN is seeking for work by its expert witnesses at JBS. For Marcus, whose testimony and analysis supported TURN's Tier 3 exemption proposal, TURN seeks \$175 per hour for work performed in 2001 and 2002, and \$185 per hour for work performed in 2003. For Nahigian, whose main efforts were in Phase 1 of the proceeding, TURN seeks hourly rates of \$115 for work performed in 2001 and 2002, and \$125 for work performed in 2003. For Ruzzovan, who provided modeling support for Marcus's analysis, TURN seeks an hourly rate of \$115 for work performed in 2002. Finally, for the small amount of time expended in this proceeding by Schilberg in 2002, TURN seeks an hourly rate of \$130. Since we have previously approved the requested rates for these JBS witnesses in other proceedings,¹⁷ we will approve them here.

The itemized direct expenses submitted by TURN include costs for photocopying, postage, telephone/facsimile and messenger services, and total \$3,337.93. TURN also seeks \$363.90 in travel costs for JBS personnel. The cost breakdown included with TURN's request shows these miscellaneous expenses to be commensurate with the work performed. We therefore find these costs to be reasonable.

compensation for that work at the 2003 rate, "without waiving our right to seek a higher rate in a future request for compensation." (TURN Request, p. 20.)

¹⁶ See, D.01-10-008, *mimeo.* at 11 (\$190 per hour approved for Hawiger's 2001 work in R.00-10-002).

¹⁷ See, D.02-11-020, *mimeo.* at 7-8, D.03-04-011, *mimeo.* at 18 (Marcus and Ruzzovan 2001-02 rates); D.03-10-011, *mimeo.* at 11 (Marcus and Nahigian 2003 rates); D.02-11-017, *mimeo.* at 9 (Nahigian and Schilberg 2001-02 rates).

6. Award

As set forth in the table below, we award TURN \$147,217.03.

Attorneys Fees	Year	Rate	Hours	Total
Matthew Freedman	2001	\$190.00	76.75	\$14,582.50
	2002	\$200.00	207.0	\$41,400.00
	2003-04	\$250.00	42.0	\$10,500.00
	2004	\$125.00	10.5	\$ 1,312.50
Michel Peter Florio	2001	\$350.00	1.5	\$ 525.00
	2002	\$385.00	13.25	\$ 5,101.25
	2003	\$435.00	0.5	\$ 217.50
Robert Finkelstein	2001	\$310.00	3.75	\$ 1,162.50
	2002	\$340.00	6.25	\$ 2,125.00
	2003	\$365.00	0.5	\$ 182.50
	2004	\$182.50	4.0	\$ 730.00
Marcel Hawiger	2001	\$190.00	7.25	\$ 1,377.50
TURN Subtotal				\$79,216.25
Expert Witness Fees	Year	Rate	Hours	Total
William Marcus	2001-02	\$175.00	97.32	\$17,031.00
	2003	\$185.00	0.5	\$ 92.50
Jeff Nahigian	2001-02	\$115.00	223.75	\$25,731.25
	2003	\$125.00	1.0	\$ 125.00
Greg Ruzsovan	2002	\$115.00	185	\$21,275.00
Gayatri Schilberg	2002	\$130.00	0.34	\$ 44.20
JBS Travel Expenses				\$ 363.90
JBS Subtotal				\$64,662.85

Other Costs				
Photocopies				\$ 2,936.14
Postage				\$ 301.80
Facsimile/Phone				\$ 33.99
Federal Express				\$ 66.00
Cost Subtotal				\$ 3,337.93
GRAND TOTAL				\$147,217.03

Consistent with previous Commission decisions, we order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after TURN filed its compensation request and continuing until full payment of the award is made.

We direct PG&E, Edison, and SDG&E to allocate responsibility among themselves based on their California-jurisdictional electric revenues for the 2002 calendar year, to reflect the year in which this proceeding was primarily litigated. The request of Mountain Utilities to be exempted from paying a proportionate share of the award is reasonable, inasmuch as the Tier 3 exemption program established in D.04-02-057 does not apply to its customers, and its proportionate share of the amount awarded here would be very small.

We remind all intervenors that Commission staff may audit their records related to this award, and that intervenors must make and retain adequate accounting and other documentation to support all claims for intervenor compensation. TURN's records should identify specific issues for which it requested compensation, the actual time spent by each employee or consultant,

the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

7. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure (Rules), we waive the otherwise applicable 30-day comment period for this decision.

8. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner, and Charlotte F. TerKeurst is the assigned ALJ in this proceeding.

Findings of Fact

1. TURN made a substantial contribution to D.02-04-026, D.04-02-057, and D.04-04-020 as described herein.
2. TURN requested hourly rates for its attorneys and experts that are reasonable when compared to the market rates for persons with similar training and experience.
3. The total of the reasonable compensation is \$147,217.03.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to intervenor compensation for its claimed compensation incurred in making substantial contributions to D.02-04-026, D.04-02-057, and D.04-04-020.
2. TURN should be awarded \$147,217.03 for its contribution to D.02-04-026, D.04-02-057, and D.04-04-020.
3. In accordance with Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$147,217.03 as compensation for its substantial contributions to Decision (D.) 02-04-026, D.04-02-057, and D.04-04-020.
2. Within 30 days of the effective date of this decision, Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company, shall each pay to TURN their respective shares of the award. Each utility's share shall be calculated based on the California-jurisdictional electric revenues of the utility for the 2002 calendar year. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning August 18, 2004, the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.
3. The comment period for today's decision is waived.

This order is effective today.

Dated _____, at San Francisco, California.

Compensation Decision Summary Information

Compensation Decision:	
Contribution Decision(s):	D0204026/D0402057/D0404020
Proceeding(s):	R0105047
Author:	ALJ TerKeurst
Payer(s):	Pacific Gas and Electric Company, Southern California Edison Company, San Diego Gas & Electric Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network	6/4/04	\$150,008.13	\$147,217.03	No	Work performed in another proceeding

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Matthew	Freedman	Attorney	The Utility Reform Network	\$190	2001	\$190
Matthew	Freedman	Attorney	The Utility Reform Network	\$200	2002	\$200
Matthew	Freedman		The Utility Reform Network	\$250	2003-04	\$250
Michel	Florio	Attorney	The Utility Reform Network	\$350	2001	\$350
Michel	Florio	Attorney	The Utility Reform Network	\$385	2002	\$385
Michel	Florio	Attorney	The Utility Reform Network	\$435	2003	\$435
Robert	Finkelstein	Attorney	The Utility Reform Network	\$310	2001	\$310
Robert	Finkelstein	Attorney	The Utility Reform Network	\$340	2002	\$340
Robert	Finkelstein	Attorney	The Utility Reform Network	\$365	2003	\$365
Marcel	Hawiger	Attorney	The Utility Reform Network	\$190	2001	\$190
William	Marcus	Economist	The Utility Reform Network	\$175	2001-02	\$175
William	Marcus	Economist	The Utility Reform Network	\$185	2003	\$185
Jeffrey	Nahigian	Economist	The Utility Reform Network	\$115	2001-02	\$115
Jeffrey	Nahigian	Economist	The Utility Reform Network	\$125	2003	\$125
Gregory	Ruszovan	Computer Modeling	The Utility Reform Network	\$115	2002	\$115
Gayatri	Schilberg	Economist	The Utility Reform Network	\$130	2002	\$130